

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

ROBERT TURNER

*** CIVIL ACTION**

VERSUS

*** NO. 11-00172**

PERFORMANCE CONTRACTORS, INC.

*** JUDGE: MARCIA A. CRONE**

JOINT MOTION TO STAY CASE DURING APPEAL

MAY IT PLEASE THE COURT:

On April 11, 2011, Plaintiff, Robert Turner, filed a Collective Action Complaint against Performance Contractors, Inc. ("PCI"), alleging violation of the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. In his Complaint and amendments thereto, Plaintiff alleged that PCI failed to pay wages for time which Plaintiff, and other similarly situated employees, spent in transit to and from their worksite within the Motiva Crude Expansion Project. PCI filed a Motion for Summary Judgment on November 30, 2011, seeking dismissal of Plaintiff's claims. All briefing has been completed with respect to the pending Motion.

In accordance with this Court's suggestion of April 25, 2012, and having no objection, the parties jointly request that the Court stay the instant lawsuit during the appeal of Judge Marcia Crone's Final Judgment and Order of Dismissal in *Griffin v. S&B Engineers and Constructors, Ltd.*, United States District Court, Eastern District of Texas, Civil Action No. 11-CV-00060, to the United States Court of Appeal for the Fifth Circuit (hereinafter referred to as the "Griffin Litigation") (See Exhibit A, Judgment).

The parties to the Griffin Litigation asserted similar factual and substantive allegations as those made herein by Robert Turner. Moreover, PCI asserts similar defenses to those asserted by S&B Engineers and Constructors in the Griffin Litigation, including that the Plaintiff's claims were barred by the Portal-to-Portal Act. In the Griffin Litigation, Judge Crone granted the Defendant's Motion for Summary Judgment and dismissed the lawsuit in its entirety, holding that the Plaintiff's claims were barred by the Portal-to-Portal Act. (Exhibit B, Memorandum and Order). The Griffin Litigation is on appeal to the United States Fifth Circuit Court of Appeal. (Exhibit C, Notice of Appeal).

Given the factual similarities between the instant case and the Griffin Litigation, the Court's suggestion regarding the instant Motion, and the judicial economy and efficiencies to be gained, the parties jointly request that this Court stay the present case during the appeal of the Griffin Litigation to the Fifth Circuit Court of Appeal. The proposed stay would remain in effect until lifted by this Court, following resolution of the appeal of the Griffin Litigation and issuance of a Mandate from the United States Fifth Circuit Court of Appeal, or any earlier final resolution of the Griffin Litigation by other means. Plaintiff's counsel agrees to promptly notify the Court within seven (7) days of the exhaustion of the appeal to the Fifth Circuit or earlier final resolution of the Griffin Litigation. Finally, the parties agree and stipulate that the statute of limitations will be tolled for any unnamed collective action members from the date of the Court's acceptance of the stipulation regarding the statute of limitations until the date the proposed stay is lifted by the Court. For the Court's convenience, an order to this effect is attached.

RESPECTFULLY SUBMITTED:

By: /s/ Gerald Bourque

Gerald Bourque
State Bar No. 02716500
24 Waterway Ave., Suite 660

The Woodlands, Texas 77380
(281) 379-6901 – Telephone
(813) 813-0321 – Facsimile
Attorney for Plaintiff, Robert Turner

AND

By: /s/ Melissa M. Shirley

Murphy J. Foster, III
La. State Bar Roll No. 5779
Melissa M. Shirley
La. State Bar Roll No. 25248
BREAZEALE SACHSE & WILSON, LLP
P. O. Box 3197
Baton Rouge, LA 70821-3197
(225) 381-3173 - Telephone
(225) 387-5397 - Facsimile
Email: mms@bswllp.com
PRO HAC VICE

Timothy M. Watson
State Bar No. 20963575
SEYFARTH SHAW LLP
700 Louisiana Street, Suite 3700
Houston, Texas 77002
(713) 225-2300 – Telephone
(713) 225-2340 – Facsimile
Attorneys for Defendant
Performance Contractors, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Joint Motion to Stay Case During Appeal was served upon all counsel of record by Notice of Electronic Filing through the Court's CM/ECF system, on the 2nd day of May, 2012.

/s/ Melissa M. Shirley
Melissa M. Shirley

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CERTIFICATE OF CONFERENCE

Melissa Shirley, counsel for PCI, and Gerald Bourque, counsel for Turner, conferred via telephone on May 1, 2012 to discuss the Joint Motion to Stay. Both parties are in agreement to stay the proceedings as outlined in the Joint Motion.

/s/ Melissa M. Shirley
Melissa M. Shirley